

OCT 30 2018

DEPARTMENT OF WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 63-34348

**DITCH COMPANIES' LIST OF WITNESSES  
AND LIST OF EXHIBITS**

In the Name of Elmore County, Board of  
County Commissioners

The Ditch Companies,<sup>1</sup> by and through their attorneys of record Sawtooth Law Offices, PLLC and pursuant to the Hearing Officer's *Amended Scheduling Order*, dated July 23, 2018, hereby submit the following list of witnesses who they may call to testify at hearing:

1. Mark Zirschky, District Superintendent, Pioneer Irrigation District
2. Mack Myers, District Manager, Settlers Irrigation District
3. Greg Curtis, Water Superintendent, Nampa & Meridian Irrigation District

<sup>1</sup> The Protestant "Ditch Companies" include Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers' Co-operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Pioneer Irrigation District, Settlers Irrigation District, South Boise Water Company, and Thurman Mill Ditch Company.

4. Allen Funkhouser, Manager/Board Member, Middleton Mill Ditch Company and Middleton Irrigation Association, Inc.
5. David Shaw, ERO Resources
6. Terry Scanlan, SPF Water Engineering, LLC
7. Franklin (Bud) Corbus, Elmore County, Board of County Commissioners
8. Al Hofer, Elmore County, Board of County Commissioners
9. Rex Barrie, Watermaster, Water District 63
10. Peter Cooper, United States Bureau of Reclamation
11. Roger Batt, Treasure Valley Water Users Association
12. Daniel Stanaway, Idaho Department of Water Resources Hydrology Section

The Ditch Companies submit the following list of exhibits that may be presented at hearing:

- Exhibit DC 1: (Official Notice requested under IDWR Procedure Rule 602 (IDAPA 37.01.01.602; “Rule 602”)) Water District 63 Contested Case Archived Documents (located on IDWR’s website at <http://www.idwr.idaho.gov/legal-actions/administrative-actions/WD63-contested-case.html>).
- Exhibit DC 2: (Official Notice under Rule 602) *Ballentyne Ditch Company, et al. v. IDWR*, Docket No. 44746-2017, Appeal of Water District 63 Contested Case Archived Documents (located on IDWR’s website at <http://www.idwr.idaho.gov/legal-actions/district-court-actions/Ditch-Companies-v-IDWR.html#44746-2017>).
- Exhibit DC 3: (Official Notice under Rule 602) Suez Water Idaho Inc. IMAP proceeding documents (located on IDWR’s website at <http://www.idwr.idaho.gov/legal-actions/administrative-actions/suez-water-idaho-inc-IMAP.html>).
- Exhibit DC 4: (Official Notice under Rule 602) IDWR online file for Water Right Application for Permit No. 63-34348 in the name of Elmore County, Board of County Commissioners (this case).

- Exhibit DC 5: (Official Notice under Rule 602) State Water Plan (located on IDWR's website at <http://www.idwr.idaho.gov/IWRB/water-planning/state-water-plan.html>).
- Exhibit DC 6: (Official Notice under Rule 602) Mountain Home Air Force Base Sustainable Water Supply Project (located on IDWR's website at <http://www.idwr.idaho.gov/IWRB/projects/MHAFB/documents.html>).
- Exhibit DC 7: Comprehensive State Water Plan Upper Boise River Basin, dated December 1992 (located on IDWR's website at <http://www.idwr.idaho.gov/waterboard/WaterPlanning/CompBasinPlanning/Upper%20Boise/upperboise.htm>).
- Exhibit DC 8: Comprehensive State Water Plan: South Fork Boise River Sub-Basin, dated June 29, 1990 (located on IDWR's website at [http://www.idwr.idaho.gov/waterboard/WaterPlanning/CompBasinPlanning/SF%20Boise/south\\_fork\\_boise.htm](http://www.idwr.idaho.gov/waterboard/WaterPlanning/CompBasinPlanning/SF%20Boise/south_fork_boise.htm)).
- Exhibit DC 9: Proposed Treasure Valley Comprehensive Aquifer Management Plan (located on IDWR's website at [http://www.idwr.idaho.gov/waterboard/WaterPlanning/CAMP/TV\\_CAMP/pdf/2012/ProposedTVCAMPPlanv5-08-2012\\_resized.pdf](http://www.idwr.idaho.gov/waterboard/WaterPlanning/CAMP/TV_CAMP/pdf/2012/ProposedTVCAMPPlanv5-08-2012_resized.pdf)).
- Exhibit DC 10: Treasure Valley DCMI Water-Demand Projections (2015-2065), dated August 8, 2016 (located on IDWR's website at <http://www.idwr.idaho.gov/files/publications/20160808-OFR-Treasure-Valley-Water-Demand-2015-2065.pdf>).
- Exhibit DC 11: Final Boise/Payette Water Storage Assessment Report, dated July 2006, BOR (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).
- Exhibit DC 12: Distributed Parameter Water Budget Base for the Lower Boise Valley, dated January 2008 (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).
- Exhibit DC 13: Modeling Spatial Water Allocation and Hydrologic Externalities, dated February 2009 (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).
- Exhibit DC 14: Boise Feasibility Study Preliminary Hydrologic Evaluation Technical Memorandum, dated February 2017 (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).
- Exhibit DC 15: Idaho Water Resource Board Resolution to Commit Funds, dated October 24, 2017 (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).

- Exhibit DC 16: Idaho Water Resource Board Resolution to Prioritize Analysis of Feasibility of Raise at Anderson Ranch Dam, dated July 27, 2018 (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).
- Exhibit DC 17: Boise River Basin Feasibility Study Open House Information, dated October 2018 (located on BOR's website at <https://www.usbr.gov/pn/studies/boisefeasibility/index.html>).
- Exhibit DC 18: Suez Water Idaho, Inc. Master Water Plan for the Years 2015 to 2065, dated September 23, 2016 (located at <https://idwr.idaho.gov/files/legal/suez-water-idaho-imap/IMAP-20170428-Suezs-Master-Water-Plan-for-the-Years-2015-to-2065.pdf>).
- Exhibit DC 19: Water Right Report for Micron Application for Water Right No. 63-34614.
- Exhibit DC 20: IDWR Administrator's Memorandum, Application Processing Memo No. 10, Subject: Right-of-way across the land of another, dated June 23, 1975, Revised August 4, 1975.
- Exhibit DC 21: IDWR Application Processing Memo No. 13, re Boise River Appropriations, dated January 22, 1980.
- Exhibit DC 22: IDWR Memorandum, Amended Application Processing No. 59, regarding Processing of Applications to Appropriate Water in the Lower Boise River Basin, dated February 22, 2008, (located at <https://idwr.idaho.gov/files/legal/WD63/WD63-20080222-Memo-Lower-Boise-River-Applications-for-Apropriation.pdf>).
- Exhibit DC 23: IDWR Administrative Memorandum, Application Processing No. 62, re: Public Interest Consideration – Small Stream Appropriations, dated July 28, 1998.
- Exhibit DC 24: IDWR Memorandum re: Standard Approval Conditions 004 and 908, dated October 26, 2018.
- Exhibit DC 25: Land ownership maps prepared by the United States Bureau of Land Management and provided to Elmore County as part of *United States' Response to Applicant's Discovery Requests*, dated (and served) August 6, 2018, In the Matter of Application for Permit No. 63-34348.
- Exhibit DC 26: Transcript of the Deposition of Terry M. Scanlan, P.E., P.G. ("Scanlan Depo"), dated September 7, 2018.
- Exhibit DC 27: City of Boise's Notice of Deposition of Terry Scanlan, dated August 20, 2018 (Scanlan Depo, Ex. 6).

- Exhibit DC 28: Elmore County, Board of County Commissioners, Amended Application for Permit No. 63-34348, dated September 15, 2017 (Scanlan Depo, Ex. 7).
- Exhibit DC 29: Expert Report for Application for Permit 63-34348, prepared by Terry M. Scanlan, P.E., P.G., SPF Water Engineering, dated August 7, 2018 (Scanlan Depo, Ex. 8).
- Exhibit DC 30: Elmore County Water Supply Alternatives, prepared by Terry M. Scanlan, SPF Water Engineering, dated February 28, 2017 (Scanlan Depo, Ex. 9).
- Exhibit DC 31: Composite groundwater-level trends (1960 – 2016), Elmore County Water Supply Alternatives, Figure 16, p. 60 (Scanlan Depo, Ex. 10).
- Exhibit DC 32: Land Use Maps (Scanlan Depo, Ex. 11).
- Exhibit DC 33: First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) (Scanlan Depo, Ex. 12).
- Exhibit DC 34: Expert rebuttal report prepared by David Shaw of ERO Resources Corporation, titled: *Application for Permit No. 63-34348 In the Name of Elmore County*, dated September 18, 2018.
- Exhibit DC 35: Transcript of the Deposition of Michael L. Taylor, Ph.D., dated September 6, 2018.
- Exhibit DC 36: Second Amended Notice of Deposition of Michael L. Taylor, Ph.D., dated August 27, 2018, (Taylor Depo, Ex. 1).
- Exhibit DC 37: Expert Report of Michael L. Taylor, Ph.D., titled: *Economic Effects of Permit 63-34348 on the Boise River Watershed and its Benefits to Elmore County*, dated August 7, 2018 (Taylor Depo, Ex. 3).
- Exhibit DC 38: Section 42-203A, Title 42, Chapter 2, Idaho Code (Taylor Depo, Ex. 4).
- Exhibit DC 39: Treasure Valley DCMI Water-Demand Projections (2015-2065), dated August 8, 2016 (excerpts), prepared by SPF Water Engineering (Taylor Depo., Ex. 5).
- Exhibit DC 40: Transcript of the Deposition of Elmore County Commissioner Franklin (Bud) Corbus, dated September 12, 2018.
- Exhibit DC 41: Notice of Taking 30(b)(6) Deposition Duces Tecum of Elmore County, Board of County Commissioners (Corbus Depo, Ex. 1).
- Exhibit DC 42: Correspondence from Scott Campbell to Stephanie Kerley, Mountain Home Ranger District, dated July 26, 2017 (Corbus Depo, Ex. 2).

- Exhibit DC 43: Correspondence from Matthew McGee to Hearing Officer Weaver, IDWR, dated July 24, 2018 (Corbus Depo, Ex. 3).
- Exhibit DC 44: Correspondence from Scott Campbell to Mountain Home Irrigation District, dated May 30, 2018 (Corbus Depo, Ex. 4).
- Exhibit DC 45: Elmore County, Board of County Commissioners Answers and Responses to Ditch Companies' First Set of Discovery Requests, dated September 10, 2018 (Corbus Depo, Ex. 6).
- Exhibit DC 46: Transcript of the Deposition of Elmore County Commissioner Al Hofer, dated September 12, 2018.
- Exhibit DC 47: First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) (Hofer Depo, Ex. 7).
- Exhibit DC 48: Correspondence from Terri Pickens Manweiler to Elmore County Land Use & Building Department and Buzz Grant, dated September 10, 2018 (Hofer Depo, Ex. 8).
- Exhibit DC 49: Transcript of the Continued Deposition of Terry M. Scanlan, P.E., P.G. (Vol. II), dated September 26, 2018 ("Scanlan II Depo").
- Exhibit DC 50: Notice of Continued Deposition Duces Tecum of Elmore County, Board of County Commissioners Expert Witness Terry Scanlan; and Notice of Continued Deposition Duces Tecum of Elmore County, Board of County Commissioners 30(b)(6) Witness Terry Scanlan (Scanlan II Depo, Ex. 1).
- Exhibit DC 51: Comments submitted by Idaho Department of Fish and Game, titled: Proposed Water Right Development, Application for Permit No. 63-34348—Elmore County, Board of Commissioners, dated September 14, 2018.
- Exhibit DC 52: "Motion" produced by Elmore County as part of its *First Supplemental Discovery Responses*, dated (and served) September 20, 2018 (Waldera Aff., Ex. F).
- Exhibit DC 53: Letter from Gary Slette to Elmore County Board of Commissioners re: Cat Creek Energy, LLC, dated September 21, 2018.
- Exhibit DC 54: First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) – sc draft 10-2-18 clean.
- Exhibit DC 55: Email correspondence from Gary Slette, dated October 4, 2018, Subject: Re: CCE: memo to affected parties – corrected.

**RESERVATION OF RIGHTS**

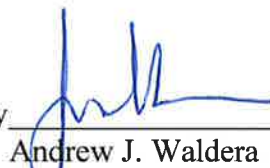
The Ditch Companies hereby reserve the right to supplement this witness list. Further, the Ditch Companies also reserve the right to call any witness named by any other party in this matter.

The Ditch Companies also reserve the right to supplement this exhibit list and to use any document or pleading filed/lodged with the Idaho Department of Water Resources in this matter. Further, the Ditch Companies reserve the right to use enlargements of any exhibit for demonstrative purposes; reserve the right to use any exhibit offered by any other party at the hearing in this matter; and reserve the right to request the Hearing Office take Official Notice of additional documents pursuant to Rule 602 prior to, or during, hearing.

DATED this 30<sup>th</sup> day of October, 2018.

SAWTOOTH LAW OFFICES, PLLC

By



Andrew J. Waldera  
Attorneys for the Ditch Companies

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of October, 2018, I caused a true and correct copy of the foregoing **DITCH COMPANIES' LIST OF WITNESSES AND LIST OF EXHIBITS** to be served by the method indicated below, and addressed to the following:

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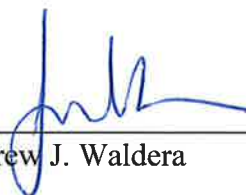
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